



---

**Comptroller General  
of the United States**

Washington, D.C. 20548

---

# Decision

**Matter of:** Richard M. Milburn High School

**File:** B-277018

**Date:** August 19, 1997

---

Robert H. Crosby for the protester.

Nicholas P. Retson, Esq., and Thomas J. Duffy, Esq., Department of the Army, for the agency.

Paula A. Williams, Esq., and Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protester's contention that agency misevaluated its proposal is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation factors.
  2. Contention that agency improperly made award on the basis of initial proposals is denied where the record shows that the solicitation clearly indicated the agency's intent to make award without discussions if possible, and the selection official reasonably determined on the basis of the evaluation results that the technically superior, lower-priced offer represented the best value under the solicitation's evaluation scheme.
- 

## DECISION

Richard M. Milburn High School protests the award of a contract to Central Texas College (CTC) under request for proposals (RFP) No. DAKF11-96-R-0034, issued by the Department of the Army for foreign language training services. Milburn challenges the agency's evaluation of its proposal and argues that the agency improperly failed to conduct discussions.<sup>1</sup>

We deny the protest.

The RFP sought offers to provide foreign language training services to Army Forces Command (FORSCOM) active duty and reserve personnel in three regional areas--I

---

<sup>1</sup>Milburn also argued in its protest that the agency failed to request revised price proposals and showed evaluator bias in favor of the awardee. In its comments on the agency report, Milburn withdrew these allegations.

Corps, III Corps, and XVIII Airborne Corps.<sup>2</sup> A detailed performance work statement (PWS) described the many languages and levels of proficiency to be taught at various installations and sites throughout the country. Offerors were required to provide resumes and letters of commitment for its key personnel, such as regional directors, that would be assigned to this contract. Offerors were to submit separate past performance, technical, and price proposals for evaluation. The RFP included detailed instructions in section L for the preparation of proposals. In section M, the following evaluation factors and subfactors (with their relative weights) were identified:

Factor 1	Past performance (total weight - 40 percent)
Subfactor a	Quality of service (30 percent)
Subfactor b	Timeliness of performance (30 percent)
Subfactor c	Cost control (20 percent)
Subfactor d	Business relations (10 percent)
Subfactor e	Customer satisfaction (10 percent)
Factor 2	Technical (total weight - 35 percent)
Subfactor a	Pre-service instruction training plan (55 percent)
Subfactor b	Staffing/recruiting/hiring plan (35 percent)
Subfactor c	Quality control plan (10 percent)
Factor 3	Price (total weight - 25 percent)

The RFP advised that a firm, fixed-price requirements contract was contemplated but provided for a possibility of multiple awards by region. The contract was for a base period with up to four 1-year options. Award was to be made to the offeror submitting the proposal representing the best overall value to the government, past performance, technical, and price factors considered. The RFP further advised that the agency might make an award based on initial proposals without conducting discussions, and that, therefore, each initial proposal should contain the offeror's most favorable terms from a price and technical standpoint.

Six firms, including Milburn and CTC, submitted proposals by the closing date for receipt of proposals. A four-member evaluation panel independently evaluated each past performance and technical proposal, using forms on which narrative comments and numerical scores were recorded. After the individual evaluations were completed, the evaluators discussed the evaluations, calculated the average point values assigned to each evaluation factor and subfactor, calculated the average

---

<sup>2</sup>The protester was the incumbent contractor for these services at XVIII Corps; the awardee was the incumbent at I Corps and III Corps.

point scores overall, ranked the proposals according to their relative standing, and assigned adjectival ratings to each proposal. Price proposals were evaluated and were determined to be realistic and reasonable.

The evaluation results for the two highest-rated proposals were:

	CTC	Milburn
Past Performance (40 percent)	92.9--Outstanding	89.3--Excellent
Technical (35 percent)	90--Excellent	75--Satisfactory
Total Price for all regions (25 percent)	\$10,434,410.66	\$10,538,836

In making the award determination, the source selection official (SSO) considered the relative strengths of CTC's proposal--which was ranked highest under the RFP's past performance and technical factors and offered the second low total price for all regions; the CTC proposal received a higher numerical rating than the Milburn proposal under each past performance subfactor, except timeliness of performance where both were equal, and under every technical subfactor and offered a lower total price for all regions than that offered by Milburn. The SSO concluded that a consolidated regional award would enhance the overall quality of performance by providing a larger pool of language instructors, provide continuity of services to FORSCOM's overall language training mission, and result in a net reduction in language training and administrative costs. Based on the evaluated superiority of the CTC proposal and its lower price, the SSO determined that the proposal represented the best value to the government and made award to CTC without conducting discussions. After receiving notice of the award, Milburn requested and received a written debriefing. This protest followed.

Milburn argues that the agency's evaluation of its proposal was flawed, particularly under the business relations subfactor of the past performance factor and the staffing/recruiting/hiring plan subfactor of the technical factor. Specifically, the protester argues that its proposal unreasonably received low ratings under these subfactors, which did not accurately reflect the merits of its proposal. Milburn also argues that the agency should have held discussions with the firm because many of the evaluators' concerns could have been easily addressed during discussions.

In reviewing a protest challenging an agency's evaluation of proposals, including the evaluation of past performance, we will examine the record to ensure that the agency's evaluation was reasonable and consistent with stated evaluation factors. Eagle Design & Management, Inc., B-275062, Jan. 21, 1997, 97-1 CPD ¶ 79 at 4. We have reviewed the proposals, individual evaluator narrative and score sheets, the consensus evaluation narrative and scores, the award recommendation memorandum, and the source selection decision, and, as discussed below, we find

no basis to question the reasonableness of the agency's evaluation of Milburn's proposal.

Milburn first alleges that the agency unreasonably downgraded its proposal under the business relations subfactor of the past performance factor on the basis of a single negative response received from a Milburn past performance reference. The evaluation record shows that, while Milburn's past performance references generally gave positive recommendations for Milburn, one of those references noted that Milburn's local program manager was not "service oriented," and another reference, in giving Milburn less than the highest rating, noted that the Milburn team's response to "inquiries, technical/service/administrative issues is somewhat effective and responsive." Our review of the record confirms the reasonableness of the rating of acceptable assigned to the proposal under the business relations subfactor--the agency had a legitimate concern about the mix of negative and positive past performance reference responses received, and Milburn has not provided evidence to support its protest contention that its proposal should have received a higher rating of excellent under this subfactor. Moreover, the record shows that the Milburn proposal received an overall past performance rating of excellent which would not be affected in any material way, even if the protest of the rating under this less important subfactor (worth only 10 percent of the past performance factor) had any merit.

Milburn next protests the agency's evaluation of its proposal under the staffing/recruiting/hiring plan subfactor of the technical factor regarding the experience of the personnel it proposed as regional directors.<sup>3</sup> The RFP required

---

<sup>3</sup>Milburn also contends that its proposal was misevaluated under this subfactor because it proposed to comply with a solicitation requirement for instructors to be certified through the use of the Defense Language Proficiency Test (DLPT). The Army explains that, during its debriefing, the protester was erroneously advised that the RFP did not include, and that Army regulations do not permit, the proposed certification. Our review of the record confirms the agency's position that the primary reason Milburn's proposal was substantially downgraded under this subfactor, as discussed above, was the evaluators' determination that Milburn's proposed regional directors did not have required relevant experience. The record shows that Milburn's proposed use of the DLPT for instructor certification had only a minor, if any, effect on the proposal's subfactor rating and provides no reason to question the low rating assigned. Although the protester contends that the procurement was flawed due to the RFP's inadvertent inclusion of the DLPT requirement, we see no reason to disturb the award determination on this basis--all offerors competed on an equal basis here and the protester has not shown how deletion of the requirement prior to the receipt of proposals would have materially affected its proposal preparation or competitive standing. Our Office will not  
(continued...)

the provision of three qualified regional directors to serve as the contractor's coordinators for the language program. Section C.5.3.1 of the PWS required, among other things, that each regional director demonstrate proficiency in second language acquisition methodology and teacher training, and have knowledge of computer-based instruction, curriculum development, and instructional applications. This section of the PWS, which identified the minimum educational and experience qualifications that these individuals had to meet, required the following of each regional director: a bachelor's degree and 5 years of documented relevant experience, or a master's degree and 3 years of documented relevant experience; the capability to administer a comprehensive foreign language program (including recruitment of instructors and monitoring instructor training); the capability to implement an effective quality control plan; responsibility for the day-to-day supervision and evaluation of instructors; and performance of research and implementation of the most current teaching methods. All offerors were advised in section M of the RFP that proposals would be evaluated for evidence of the offeror's capability to meet or exceed these PWS requirements.

The evaluators determined that the resumes submitted by Milburn demonstrated that, although Milburn's proposed regional directors possessed the requisite academic qualifications, not one of the three individuals met the minimum experience requirements set forth in the PWS to show the capability to perform the requirements of the regional director position. For example, although one proposed regional director's resume showed a master's degree in management, the evaluators found only 2 years, at most, of directly relevant work experience; the evaluators also noted a lack of experience in the critical roles of curriculum development, computer-based instruction, and supervision of instructors. Our review of the proposal resume for this individual supports the agency's evaluation--the individual has many years of experience as a Russian language instructor, some consulting experience, and a limited amount of general management experience, yet the resume does not show at least 3 years of directly relevant experience, as required, to persuasively demonstrate the capability to perform this role as described in the PWS. Further, although the resumes of the second and third proposed regional directors show appropriate academic qualifications and several years of experience as language instructors, neither individual's resume shows specific experience in the relevant areas of foreign language program management, supervision, teacher training and curriculum, and computer-based instruction. The record thus supports the evaluators' determination that the protester's proposed regional directors lacked

---

<sup>3</sup>(...continued)

sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

necessary experience to perform the contract services; consequently, we have no reason to question the reasonableness of the agency's substantial downgrading (to a rating of unacceptable) of the proposal under the relevant staffing/recruiting/hiring plan subfactor or the agency's general concern with the offeror's understanding of the solicitation requirements in this area. While Milburn disagrees with the evaluation, that disagreement does not show that the evaluation was unreasonable. Eagle Design & Management, Inc., *supra*, at 4.

Finally, as to Milburn's contention that the agency improperly awarded a contract to CTC without conducting discussions, the solicitation clearly advised offerors of the agency's intent to make award without discussions. Our Office will review an agency's decision to make award without discussions to ensure that it was reasonably based on the particular circumstances of the procurement, including consideration of the proposals received and the basis for the selection decision. Harry A. Stroh Assocs., Inc., B-274335, Dec. 4, 1996, 97-1 CPD ¶ 18 at 5-6; International Data Prods., Corp. et al., B-274654 *et al.*, Dec. 26, 1996, 97-1 CPD ¶ 34 at 10-11. The record shows that CTC's proposal received higher numeric technical evaluation scores than the Milburn proposal under every evaluation factor and all subfactors but one, and the CTC proposal offered a lower total price. Given the deficiencies in the Milburn proposal, the overall technical superiority of the awardee's proposal, and the reasonableness of the awardee's proposed price, the record supports the reasonableness of the agency's determination that CTC's proposal represented the best value to the government without the need for discussions.

The protest is denied.

Comptroller General  
of the United States